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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 26th October, 2017

\+ MAC.APP. 409/2016 & CM No. 18410/2016 (stay) & CM No. 18421/2016

UNIVERSAL SOMPO GEN. INS. CO. LTD. ..... Appellant

Through: Mr. Mohammad Mustafa, Adv.

versus

SAVITRI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The deceased, Akash Tiwari, was a bachelor and a trained nuero therapist earning Rs. 20,000/- or more from private employment. The tribunal has awarded compensation on account of his death in motor vehicular accident that occurred on 23.12.2012 involving negligent driving of a bus bearing registration no. DL-1PB-6949 admittedly insured against third party risk with the appellant (insurer), calculating the loss of dependency on the basis of income notionally assessed with the help of minimum wages. While the appeal has been filed by the insurer questioning the method of calculation of loss of dependency wherein personal and living expenses were deducted to the extent of

one fourth only, after the addition of element of future prospects, applying the multiplier according to the age of the claimant (mother), it is a grievance urged by the claimants that they were not given the opportunity to prove the employment giving rise to higher earnings. Thus, the counsel for the claimants submitted that the appeal of the insurance company may be allowed reserving the contentions of all sides and the matter may be remitted to the tribunal for further inquiry with opportunity to be made available for additional evidence on the subject of private employment and earnings of the deceased.

2. The learned counsel for the appellant, on being asked, submitted that he leaves the matter to the discretion of the Court.

3. In the facts and circumstances noted above, the prayer of the claimants is granted. The impugned judgment is set aside and the matter is remitted for further inquiry in the course of which they shall have the liberty to adduce additional evidence on the subject of earnings of the deceased. The tribunal will also give opportunity to the parties that contest to lead evidence in rebuttal if any. The contentions of all sides are reserved. The parties shall appear before the tribunal on 27th November, 2017.

4. By order dated 16.05.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal and out of such deposit 40% was permitted to be released to the claimants, the balance kept in interest bearing fixed deposit account. The balance retained with accrued interest shall be presently released to the insurance company. The amount already

received by the claimants will be liable to be adjusted against the fresh award passed by the tribunal.

5. Statutory amount shall be refunded.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 26, 2017
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